

1984 WL 249936 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 18, 1984

\*1 The Honorable Joseph F. Anderson, Jr.  
Member  
House of Representatives  
Post Office Box 507  
Edgefield, South Carolina 29824

Dear Representative Anderson:

By your letter of March 23, 1984, you have asked whether the Edgefield County Hospital can borrow money in its own name under its enabling legislation. After examining Act No. 1514, 1968 Acts and Joint Resolutions and amendments thereto, we must advise that it is doubtful, under the existing legislation, that the Hospital may so borrow in its own name.

Act No. 1514 created the Edgefield County Hospital upon a favorable referendum of the electorate. Section 5 of that Act specifies the hospital board's powers and duties; while the board's power to borrow money in the name of the hospital is not expressly stated, other powers relative to fiscal matters are so stated. See parts: (2), to adopt regulations, etc. relating to expenditure of funds; (3), to acquire by various means real and personal property; (10), to establish rates for use of services and facilities; (12), to define eligibility requirements relative to charity patients and collection of partial payments therefrom; (13), to expend proceeds derived from the charges made for use of services and facilities; (15), to expend funds; (16), to apply for grants; and (18), to enter into certain contracts for hospital care. Because the legislature chose to enumerate the powers of the board so specifically, it may be presumed that the legislature intended to omit those not so specified, including the borrowing of money in the name of the hospital. [Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1938); 2A [Sutherland Statutory Construction](#), § 47.23.

Moreover, the strong fiscal ties of the hospital to the county again make such power on the part of the hospital board doubtful. Section 8 of Act No. 1514 provides that '[t]he board [of the hospital] shall manage and control the hospital and its financial affairs, but shall have no authority to create any financial obligation on the county beyond the amounts appropriated for the hospital.' (Emphasis added.) Additionally, Section 6 is the only provision addressing the hospital's incurring of obligations; that section provides that '[b]onds or notes of the hospital shall be issued by the governing body of the county upon the authorization of the county legislative delegation.<sup>1</sup> The funds received from such issue shall be deposited with the county treasurer.' The Act has generally enumerated the hospital board's powers and duties but has specified that the county be involved in the issuance of notes, bonds, and such obligations. While it is unclear whether the hospital board may incur indebtedness in any other way, the specific provision would most probably be deemed controlling over the general provisions mentioned above, thus limiting the power of the hospital board to incur indebtedness in accordance with the provisions of Section 6. [Wilder v. South Carolina State Department](#), 228 S.C. 448, 90 S.E.2d 635 (1956).

\*2 We would note that the Edgefield County Hospital appears to be a county agency, rather than a separate political subdivision, since it lacks many of the attributes generally associated with political subdivisions.<sup>2</sup> The fiscal ties to Edgefield County Council are further evidence of the hospital as a county agency. Furthermore, hospital and medical care matters are properly county matters, pursuant to [Section 4-9-30\(5\), Code of Laws of South Carolina](#) (1983 Cum.Supp.). County Council would be the appropriate governmental body to enact an ordinance empowering the hospital to borrow money in its own name if such would be deemed desirable, since a similar act by the General Assembly would very likely be violative of [Article VIII, Section 7 of the Constitution of South Carolina](#). Taxing power, to create a sinking fund or to repay any indebtedness, would

remain with County Council pursuant to [Section 4-9-30\(5\) of the Code](#), rather than with the appointed hospital commission, thus avoiding a situation similar to that in [Crow v. McAlpine](#), 277 S.C. 240, 285 S.E.2d 355 (1981).

In conclusion, we would advise that the Act is, at best, ambiguous and that our interpretation is not free from doubt. County Council may wish to proceed under its Home Rule powers, or the hospital commission may wish to seek a declaratory judgment to clarify its powers. Please advise us if we may be of additional assistance in the matter.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

Footnotes

- 1 This Office does not address herein the role of the county legislative delegation relating to the Edgefield County Hospital.
- 2 The hospital commission has not been designated a body politic or corporate, though such designation would not in and of itself make such a body a political subdivision. [Richmond County Hospital Authority v. McClain](#), 112 Ga.App. 209, 144 S.E.2d 565 (1965). The hospital serves the entire county and is not restricted to a specified geographic area with certain boundaries other than the boundaries of Edgefield County. [Bolen v. Board of Firemen, etc.](#), 308 S.W.2d 904 (Tex.Civ.App. 1957); [McClanahan v. Cochise College](#), 25 Ariz.App. 13, 540 P.2d 744 (1975). The hospital commission possesses no taxing powers. [Bolen v. Board of Firemen, etc.](#), *supra*; [Commander v. Board of Commissioners of Buras Levee District](#), 202 La. 325, 11 So.2d 605 (1942). However, the hospital commission does exercise a governmental function relating to hospital and medical care. [Lydecker v. Commissioners](#), 41 N.J.L. 154. See also [Op. Atty. Gen.](#) dated July 3, 1984.

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